

1 Article 6. Standards for Imposing Lawyer Sanctions

2 Summary.

3 ~~These Standards are based on the Black Letter Rules contained in the Standards for~~  
4 ~~Imposing Lawyer Sanctions prepared by the American Bar Association's Center for~~  
5 ~~Professional Responsibility. They have been substantially revised by the Advisory~~  
6 ~~Committee. Notably, ABA Standards 4 through 8 have been reduced into a single~~  
7 ~~Standard 4.~~

8 Rule 14-601. Definitions.

9 As used in this article:

10 (a) "complainant" means the person who files an informal complaint or the OPC  
11 when the OPC determines to open an investigation based on information it has  
12 received;

13 (b) "formal complaint" means a complaint filed in the district court alleging  
14 misconduct by a lawyer or seeking the transfer of a lawyer to disability status;

15 (c) "informal complaint" means any written, notarized allegation of misconduct by or  
16 incapacity of a lawyer;

17 (d) "injury" is means harm to a client, the public, the legal system, or the profession  
18 which results from a lawyer's misconduct. The level of injury can range from "serious"  
19 injury to "little or no" injury; a reference to "injury" alone indicates any level of injury  
20 greater than "little or no" injury;

21 (e) "intent" is means the conscious objective or purpose to accomplish a particular  
22 result;

23 (f) "Knowledge" is means the conscious awareness of the nature or attendant  
24 circumstances of the conduct but without the conscious objective or purpose to  
25 accomplish a particular result;

26 (g) "Negligence" is means the failure of a lawyer to heed a substantial risk that  
27 circumstances exist or that a result will follow, which failure is a deviation from the  
28 standard of care that a reasonable lawyer would exercise in the situation;

29 (h) "Potential injury" is means the harm to a client, the public, the legal system or  
30 the profession that is reasonably foreseeable at the time of the lawyer's misconduct,

and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct;

(i) "respondent" means a lawyer subject to the disciplinary jurisdiction of the Supreme Court against whom an informal or formal complaint has been filed;

(j) "Rules of Professional Conduct" means the Utah Rules of Professional Conduct (including the accompanying comments) initially adopted by the Supreme Court in 1988, as amended from time to time.

Rule 14-602. Purpose and nature of sanctions.

(a) Summary. This article is based on the Black Letter Rules contained in the Standards for Imposing Lawyer Sanctions prepared by the American Bar Association's Center for Professional Responsibility. They have been substantially revised by the Supreme Court. Notably, ABA Standards 4 through 8 have been reduced into a single Rule 14-605.

1.1(b) Purpose of lawyer discipline proceedings. The purpose of imposing lawyer sanctions is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers, and to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable or likely to be unable to discharge properly their professional responsibilities.

1.2(c) Public nature of lawyer discipline proceedings. Ultimate disposition of lawyer discipline shall be public in cases of disbarment, suspension, and reprimand, and nonpublic in cases of admonition.

1.3(d) Purpose of these standards-rules. These standards-rules are designed for use in imposing a sanction or sanctions following a determination that a member of the legal profession has violated a provision of the Rules of Professional Conduct. Descriptions in these standards-rules of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Rules of Professional Conduct. The standards-rules constitute a system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote:

61 ~~(a)(d)(1)~~ consideration of all factors relevant to imposing the appropriate level of  
62 sanction in an individual case;

63 ~~(b)(d)(2)~~ consideration of the appropriate weight of such factors in light of the stated  
64 goals of lawyer discipline; and

65 ~~(e)(d)(3)~~ consistency in the imposition of disciplinary sanctions for the same or  
66 similar offenses within and among jurisdictions.

67 Rule ~~214-603~~. Sanctions.

68 ~~2.1.(a)~~ Scope. A disciplinary sanction is imposed on a lawyer upon a finding or  
69 acknowledgement that the lawyer has engaged in professional misconduct.

70 ~~2.2.(b)~~ Disbarment. Disbarment terminates the individual's status as a lawyer. A  
71 lawyer who has been disbarred may be readmitted as provided in Rule ~~25-14-525 of the~~  
72 ~~Rules of Lawyer Discipline and Disability~~.

73 ~~2.3.(c)~~ Suspension. Suspension is the removal of a lawyer from the practice of law  
74 for a specified minimum period of time. Generally, suspension should be imposed for a  
75 specific period of time equal to or greater than six months, but in no event should the  
76 time period prior to application for reinstatement be more than three years.

77 ~~(a)(c)(1)~~ A lawyer who has been suspended for six months or less may be reinstated  
78 as set forth in Rule ~~24-14-524 of the Rules of Lawyer Discipline and Disability~~.

79 ~~(b)(c)(2)~~ A lawyer who has been suspended for more than six months may be  
80 reinstated as set forth in Rule ~~25-14-525 of the Rules of Lawyer Discipline and~~  
81 ~~Disability~~.

82 ~~2.4.(d)~~ Interim suspension. Interim suspension is the temporary suspension of a  
83 lawyer from the practice of law. Interim suspension may be imposed as set forth in  
84 Rules ~~18-14-518 and 19-14-519 of the Rules of Lawyer Discipline and Disability~~.

85 ~~2.5.(e)~~ Reprimand. Reprimand is public discipline which declares the conduct of the  
86 lawyer improper, but does not limit the lawyer's right to practice.

87 ~~2.6.(f)~~ Admonition. Admonition is nonpublic discipline which declares the conduct of  
88 the lawyer improper, but does not limit the lawyer's right to practice.

89 ~~2.7.(g)~~ Probation. Probation is a sanction that allows a lawyer to practice law under  
90 specified conditions. Probation can be public or nonpublic, can be imposed alone or in

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conjunction with other sanctions, and can be imposed as a condition of readmission or reinstatement.

2.8.(h) Resignation with discipline pending. Resignation with discipline pending is a form of public discipline which allows a respondent to resign from the practice of law while either an informal or formal complaint is pending against the respondent. Resignation with discipline pending may be imposed as set forth in Rule 24-14-521 ~~of the Rules of Lawyer Discipline and Disability.~~

2.9.(i) Other sanctions and remedies. Other sanctions and remedies which may be imposed include:

~~(a)(i)(1)~~ restitution;

~~(b)(i)(2)~~ assessment of costs;

~~(c)(i)(3)~~ limitation upon practice;

~~(d)(i)(4)~~ appointment of a receiver;

~~(e)(i)(5)~~ a requirement that the lawyer take the ~~b~~Bar ~~e~~Examination or professional responsibility examination; and

~~(f)(i)(6)~~ a requirement that the lawyer attend continuing education courses.

2.10.(j) Reciprocal discipline. Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

Rule 314-604. Factors to be considered in imposing sanctions.

3.1. Generally.

The following factors should be considered in imposing a sanction after a finding of lawyer misconduct:

(a) the duty violated;

(b) the lawyer's mental state;

(c) the potential or actual injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors.

Rule 414-605. Imposition of sanctions.

4.1. Generally.

Absent aggravating or mitigating circumstances, upon application of the factors set out in [Standard 3.4 Rule 14-604](#), the following sanctions are generally appropriate.

[4.2.\(a\)](#) Disbarment. Disbarment is generally appropriate when a lawyer:

(a)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct with the intent to benefit the lawyer or another or to deceive the court, and causes serious or potentially serious injury to a party, the public, or the legal system, or causes serious or potentially serious interference with a legal proceeding; or

~~(b)~~(a)(2) engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

~~(c)~~(a)(3) engages in any other intentional misconduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

[4.3.\(b\)](#) Suspension. Suspension is generally appropriate when a lawyer:

~~(a)~~(b)(1) knowingly engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury or potential injury to a party, the public, or the legal system, or causes interference or potential interference with a legal proceeding; or

(b)(2) engages in criminal conduct that does not contain the elements listed in [Standard 4.2\(b\) Rule 14-605\(a\)\(2\)](#) but nevertheless seriously adversely reflects on the lawyer's fitness to practice law.

[4.4.\(c\)](#) Reprimand. Reprimand is generally appropriate when a lawyer:

~~(a)~~(c)(1) negligently engages in professional misconduct as defined in Rule 8.4(a), (d), (e), or (f) of the Rules of Professional Conduct and causes injury to a party, the public, or the legal system, or causes interference with a legal proceeding; or

~~(b)~~(c)(2) engages in any other misconduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

150 ~~4.5.(d)~~ Admonition. Admonition is generally appropriate when a lawyer:

151 ~~(a)(d)(1)~~ negligently engages in professional misconduct as defined in Rule 8.4(a),  
152 (d), (e), or (f) of the Rules of Professional Conduct and causes little or no injury to a  
153 party, the public, or the legal system or interference with a legal proceeding, but  
154 exposes a party, the public, or the legal system to potential injury or causes potential  
155 interference with a legal proceeding; or

156 ~~(b)(d)(2)~~ engaged in any professional misconduct not otherwise identified in this  
157 ~~Standard 4~~rule that adversely reflects on the lawyer's fitness to practice law.

158 Rule ~~5~~14-606. Prior discipline orders.

159 ~~5.1. Generally.~~

160 Absent aggravating or mitigating circumstances, upon application of the factors set  
161 out in ~~Standard 3.1~~Rule 14-604, the following principles generally apply in cases  
162 involving prior discipline.

163 ~~5.2. Additional sanctions for violation of prior disciplinary order.~~

164 ~~(a)~~ The ~~district~~ court ~~or Supreme Court~~ may impose further sanctions upon a lawyer  
165 who violates the terms of a prior disciplinary order.

166 ~~5.3. Repeated similar misconduct.~~

167 ~~(b)~~ When a lawyer engages in misconduct similar to that for which the lawyer has  
168 previously been disciplined, the appropriate sanction will generally be one level more  
169 severe than the sanction the lawyer previously received, provided that the harm  
170 requisite for the higher sanction is present.

171 Rule ~~6~~14-607. Aggravation and mitigation.

172 ~~6.1. Generally.~~

173 After misconduct has been established, aggravating and mitigating circumstances  
174 may be considered and weighed in deciding what sanction to impose.

175 ~~6.2.(a)~~ Aggravating circumstances. Aggravating circumstances are any  
176 considerations or factors that may justify an increase in the degree of discipline to be  
177 imposed. Aggravating circumstances may include:

178 ~~(a)(1)~~ prior record of discipline;

179 ~~(b)(a)(2)~~ dishonest or selfish motive;

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~~(c)~~(a)(3) a pattern of misconduct;  
~~(d)~~(a)(4) multiple offenses;  
~~(e)~~(a)(5) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;  
~~(f)~~(a)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;  
~~(g)~~(a)(7) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;  
~~(h)~~(a)(8) vulnerability of victim;  
~~(i)~~(a)(9) substantial experience in the practice of law;  
~~(j)~~(a)(10) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and  
~~(k)~~(a)(11) illegal conduct, including the use of controlled substances.

**6.3.(b)** Mitigating circumstances. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating circumstances may include:

~~(a)~~(b)(1) absence of a prior record of discipline;  
(b)(2) absence of a dishonest or selfish motive;  
~~(c)~~(b)(3) personal or emotional problems;  
~~(d)~~(b)(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct involved;  
~~(e)~~(b)(5) full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings;  
~~(f)~~(b)(6) inexperience in the practice of law;  
~~(g)~~(b)(7) good character or reputation;  
~~(h)~~(b)(8) physical disability;  
~~(i)~~(b)(9) mental disability or impairment, including substance abuse when:  
~~(j)~~(b)(9)(A) ~~T~~the respondent is affected by a substance abuse or mental disability;  
and

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~~(2)(b)(9)(B)~~ The substance abuse or mental disability causally contributed to the misconduct; and

~~(3)(b)(9)(C)~~ The respondent's recovery from the substance abuse or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

~~(4)(b)(9)(D)~~ The recovery arrested the misconduct and the recurrence of that misconduct is unlikely;

~~(j)(b)(10)~~ unreasonable delay in disciplinary proceedings, provided that the respondent did not substantially contribute to the delay and provided further that the respondent has demonstrated prejudice resulting from the delay;

~~(k)(b)(11)~~ interim reform in circumstances not involving mental disability or impairment;

~~(l)(b)(12)~~ imposition of other penalties or sanctions;

~~(m)(b)(13)~~ remorse; and

~~(n)(b)(14)~~ remoteness of prior offenses.

~~6.4.(c) Factors which are neither aggravating nor mitigating~~Other circumstances.

The following circumstances should not be considered as either aggravating or mitigating:

~~(a)(c)(1)~~ forced or compelled restitution;

~~(b)(c)(2)~~ withdrawal of complaint against the lawyer;

(c)(3) resignation prior to completion of disciplinary proceedings;

~~(d)(c)(4)~~ complainant's recommendation as to sanction; and

~~(e)(c)(5)~~ failure of injured client to complain.